**IN THE HIGH COURT OF BOMBAY AT GOA**

**COMPANY PETITION NO. 7-C OF 2004**

M/s Cedervall and Soner
AB, Ltd. ... Petitioners

versus

M/s Western India Shipyard
Ltd. ... Respondents

Mr. P. A. Kholkar, Advocate for the Petitioner.

Mr. U. R. Timble, Advocate for the Respondent.

**CORAM : N. A. BRITTO, J.**

**DATE : 31ST MARCH, 2006.**

**P.C.:-**

Heard Mr. P. A. Kholkar, the learned Counsel on behalf of the petitioner and Mr. U. R. Timble, the learned Counsel on behalf of the respondent.

The matter has come up for further directions pursuant to the Order of this Court dated 30-9-2005. By virtue of the said Order dated 30-9-2005 the respondent-Company was directed to pay an amount of Rs.10,00,000/- duly converted into

Swedes Krones by the Bankers by sight draft through Syndicate Bank, Mormugao Harbour, Goa within six weeks. Time for payment of the said Rs.10,00,000/- duly converted, was extended by this Court by Order dated 18-11-2005. There is no dispute that since then a sum of Rs.1,74,216.89 in Swedes Krones has been paid to the petitioner. That being the equivalent amount of Indian Rs.10,00,000/-. The contention of the petitioner is that the amount of Rs.1,57,500 Swedes Krones which was payable by the respondent to the petitioner as on 27-3-2001 was payable with interest at the rate of 12.5% as agreed by the parties pursuant to petitioner's communication dated 1-4-2006(Ann.P-3) to the petition.

The respondent had placed an order with the petitioner for the supply of certain machinery at the cost of Rs.1,57,500.00 Swedes Krones and that was by virtue of purchase order dated 27-3-2001(Ann.P-1). The terms were agreed upon by both the parties and that can be seen from the Annexure to the said purchase order. As per the said terms the payment was to be made by the respondent by sight draft through Bank. The machinery was supplied on or about 1-4-2001 and on 19-12-2001 the respondent wrote to the petitioner

informing them that they would pay the amount due in three instalments commencing from January, 2002. On 4-2-2004 (Ann.P-5) the petitioner wrote a letter to the respondent informing that in case of overdue payment they charge delay interest i.e. Swedes discount plus 10%, which is stated to be 12.5%. It is this interest which now the petitioner is claiming from the respondent inspite of having been paid a sum of Rs.1,74,216.89 Swedes krones on or about 24-11-2005 and which is disputed on behalf of the respondent stating that the payment of the said interest was not agreed upon. The letter dated 27-3-2001 by which order was placed for the supply of the machinery with the petitioner does not contemplate payment of any interest. Similarly, the Annexure 1 annexed to the said order also does not in clear terms speak of the payment of any interest after 30 days. It is only by the said letter dated 4-2-2002 that the petitioner has claimed interest from the respondent on the said sum of Rs.1,57,500/- Swedes Krones which has been disputed by the respondent. Considering the said dispute this will not be a fit case to order dissolution of the respondent-Company. The petitioner would be entitled to pursue civil remedy in case at all the petitioner is entitled to the

said interest of 12.5%.

With the above observation, the petition is hereby dismissed.

**N. A. BRITTO, J.**

**RD**